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7 Bullet Points to Remember about PTSD Claims in Litigation

1. Authentic PTSD can, and usually does, produce severe disability of a person's psychological functioning:

It is important to remember that “impairment of psychosocial functioning” is a *sine qua non* for every psychiatric diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (*DSM-5*). Thus, although genuine PTSD is usually severely disabling, in the absence of marked psychological functional impairment, there can be no *DSM-5* disorder, and therefore no PTSD.

2. Not every traumatic event causes PTSD:

For example, studies show that approximately 50% of women who have been violently raped develop PTSD. What is most remarkable is that approximately 50% do not! The reasons why some people can be overwhelmed by a traumatic stressor while others are not, is the basis for extensive international research to identify PTSD *vulnerability factors* as well as *resiliency factors* and *bio markers*.

3. Generally the severity of the stressor correlates directly with the likelihood of developing PTSD...but sometimes it does not:

Although surviving an airplane crash, or a concentration camp internment or torture, is statistically more likely to produce PTSD than less stressful experiences, some survivors of even extreme stress do not develop PTSD while some minor automobile accident victims do.

4. Under the DSM-5 diagnostic criteria for PTSD, the only "objective" criterion, generally witnessing or experiencing a life threatening event (or, in children, experiencing the threat of actual and often repeated sexual abuse):

All other PTSD diagnostic criteria are “subjective” only. Thus, even if an individual reports symptoms characteristic of PTSD, such as “flashbacks,” recurrent nightmares, social withdrawal, isolation, avoidance behaviors, and/or increased physiological reactivity, without clearly fulfilling the event criterion as explicitly described in the *DSM-5*, there can be no diagnosis of PTSD. The individual may or may not be suffering from one or more other mental disorders, but it is not PTSD.

5. In addition, the “Event” criterion for PTSD is like pregnancy - one either fulfills the criterion or does not - for medical-legal purposes, there are no shades of gray:

Thus, even people who experience extremely disturbing, disgusting or obnoxious conditions that do not meet the “Event” criteria for the diagnosis may indeed be markedly distressed. However, their experiences do not fulfill the diagnostic criteria for PTSD.

6. So-called psychological PTSD tests, e.g. the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5), the Detailed Assessment of Posttraumatic Stress (DAPS), the Trauma Symptom Inventory (TSI) and many, many other checklist questionnaires that are so-called PTSD "tests," although useful in a clinical setting, are worthless in the forensic setting for medical-legal diagnostic assessment purposes:

There are many symptom checklists for PTSD (just as there are for depression and anxiety), but they are just that, lists of typical subjective PTSD symptoms that an examinee does or does not endorse. Such lists are readily available to the public on the internet and in books and pamphlets. These checklists lack any of the robust validity scales and structural controls that are built into the types of tests that we rely upon when conducting forensic psychiatric and psychological assessments (for example, the multiple validity scales structured into the Minnesota Multiphasic Personality Inventory-2 or MMPI-2). By including multiple validity scales, robust psychological tests are able to better accommodate the motivational complexity of litigant examinees, in contrast to examinees who are only patients.

It is important to recognize that litigants' motivations are usually more complex than those of patients. Patients generally have a singular motivation, i.e., seeking relief from suffering and returning to their prior state of wellness. Litigants may, in addition, have other complicating motivations, such as the desire to seek financial compensation, to seek justice or even to seek revenge and retribution. These additional motivations can color their responses to psychological checklist questionnaires, creating exaggerated or false diagnostic impressions. It is the duty of the forensic psychiatrist and psychologist to always maintain a degree of professional curiosity and skepticism about the motivations of the litigants whom we examine, regardless of which side retains us.

7. Often treating clinicians will diagnose PTSD in their patient, based entirely upon the patient's subjective self-report and/or the clinician's sympathetic desire to be supportive and "helpful" in their patient's anticipated ligation:

The role of the treating physician is markedly different in mission, method and ethical duty, from that of independent forensic psychiatrist or psychologist. Therefore, it is incumbent, when a plaintiff's PTSD diagnosis in litigation is based upon a treating clinician's opinion, to retain a forensic expert to scrutinize the objective evidence upon which the treating clinician's diagnosis is based.

Key point summary:

a. Genuine PTSD can be a truly disabling psychiatric condition, dramatically interfering with psychological functioning and requiring multi-modality treatment;

b. Although many litigants allege a diagnosis of PTSD as evidence of emotional damages, on close scrutiny, only a minority of claimants actually fulfill the rigorous diagnostic criteria required by the DSM-5 to support this diagnosis;

c. Any PTSD diagnosis by offered by a treater must be scrutinized for objective supporting evidence;

d. So-called PTSD psychological tests, without exception, are fraught with difficulties when used as objective "evidence" in litigation; and

e. Thus, when PTSD claims are alleged, it behooves trial attorneys on both sides of the case to retain forensic psychiatric and/or psychological experts who are trained to discern and separate mere claims of PTSD from those supported by objective evidence of this potentially devastating psychiatric condition.

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